

ACTA

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December 3, 1998

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
TW-A325
445 Twelfth Street, SW
Washington, DC 20554

EX PARTE COMMUNICATION

Re: CC Docket No. 94-129

Dear Ms. Salas:

Pursuant to Section 1.1206 of the Commission's Rules, an original and two copies of this letter are being filed to disclosed a permissible *ex parte* communication made this date with Kevin Martin of Commissioner Furchtgott-Roth's office and Paul Gallant of Commissioner Tristani's office regarding the above-referenced docket number involving the Commission's efforts to combat slamming. Attached as part of this filing is a copy of the written *ex parte* presentation made.

Please date stamp the extra copy of this filing and return it to the messenger. Please contact the undersigned with any questions at (703) 714-1311.

Sincerely,



Robert M. McDowell
Executive Vice President
and General Counsel, ACTA

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ACTA

America's Carriers Telecommunication Association Outline of Proposals to Combat "Slamming"

Executive Summary

- Congress came extremely close to passing anti-slamming legislation this year. Congressional leaders have said that legislation that is substantially similar to H.R. 3888 should pass early in 1999.
- ACTA urges the Commission to forestall any slamming order until Congress reconvenes.
- Should the Commission issue an order anyway, its order should mirror H.R. 3888 as outlined below.

ACTA Supports The Voluntary Code Concept

- Allowing IXC's to choose (or refuse) to be voluntary "Code Carriers" has several benefits:
 - the Code will create a disincentive to slam because of harsher and more immediate penalties imposed upon non-Code carriers that slam;
 - the penalties against Code carriers that repeatedly slam are also harsh and provide an additional disincentive to slam;
 - the FCC will be able to flag and more closely monitor non-Code carriers; and
 - consumers, once aware of the Code, will have the choice of avoiding non-Code carriers.

- Periodic independent audits of Code carriers and their quality control programs will help to ensure Code compliance and minimize deliberate slamming.
- Adoption of a voluntary Code comports with the 1996 Act's de-regulatory intent.

Versions of H.R. 3888 Contained Provisions That Would Help To Combat Reverse Fraud While Also Compensating Consumers

- Offering unlimited free long distance services to consumers who allege slamming opens the door to "reverse fraud."
- Versions of H.R. 3888 contemplated this problem and allowed for consumers to receive 30 days of free long distance charges courtesy of the slammer. Any more than that will lead to reverse fraud.
- IXC's must be allowed to re-bill consumers who erroneously allege a slam within 30 to 60 days of the complaint. Beyond such a time frame, the probability of collecting that revenue greatly diminishes. Therefore, complaints must be resolved quickly.
- Furthermore, ACTA supports the bill's recognition that IXC's should not be penalized (beyond crediting consumers for PIC change fees and 30 days' usage) for inadvertent or unintentional switches. Should an IXC constantly claim that its slams are inadvertent, the FCC should have the option of

investigating further and, if necessary, imposing harsher penalties.

ILECs Have A Conflict Of Interest When It Comes To Policing Slamming

- ACTA is concerned about attempts to have the LECs, who are or will be executing *and* submitting carriers, be the unchecked police force, judge, jury and executioner enforcing rules against their competitors. Any new rules should contemplate what to do about slams involving intraLATA toll traffic where IXC's are directly competing with ILECs. Also, any rules should contemplate how LECs should be treated once they are allowed into in-region long distance under § 271.

- Because ILECs are both submitting carriers and executing carriers, they should be held to a higher level of scrutiny -- at a minimum mandatory third-party verification.

- The PIC freeze option being pushed by the ILECs could be used as an anti-competitive weapon against competing IXC's.

ACTA Supports Proposals Designed To Streamline The Complaint Process at the FCC

- ACTA has argued for years that the complaint process at the FCC should be simplified and shortened. ACTA supports such a concept provided both consumers' and carriers' due process rights are preserved.

"Carrier-to-Carrier" Penalties Could Be Used by Larger IXC's for Anti-Competitive Purposes

- ACTA opposed the so-called "AT&T Amendment" that would have allowed for

coercive tactics by larger carriers with ample litigation budgets to intimidate smaller IXC's. "Out-of-court" negotiations for penalties of up to \$500+ per slam could all-too-easily be used as anti-competitive weapons.

State Rules Should Be Compatible

- States should be allowed to implement anti-slamming rules that are compatible with federal rules, but NOT more restrictive. Otherwise, allowing the Balkanization of telecom regulation will only harm competition. The states should also be allowed to enforce federal rules.

Any Regulatory Structure Affecting TPV or PIC Clearinghouses Should Encourage Competition In Those Industries

ACTA is concerned that proposals regarding PIC clearinghouses or centralized TPV entities may limit the number of entrants that can provide such services. Many of ACTA's vendor members have been providing such services for many years. ACTA maintains that no governmental action should do anything less than promote competition in such industries.

rmm/070/slamming/fcc2mem